

5. That the Plaintiff is a natural person and a "consumer" within the meaning of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 (a)(3).

6. That the Defendant is a collection agency which is engaged in the business of collecting debts and regularly attempts to collect debts alleged to be due another by use of the mail and telephone and as such is a debt collector within the meaning of 15 U.S.C. § 1692 (a)(6).

7. That all times relevant hereto the Defendant was attempting to collect an alleged consumer debt alleged to be in default by the Plaintiff from a creditor, for personal, family, or household purposes.

8. That during the course of attempting to collect the alleged debt, Defendant ERS left messages on Plaintiff's cell phone:

This message did not say to whom it was directed. The automated message was left numerous times between April and June 2011.

9. That the Defendant violated the FDCPA in the following particulars:

- a) by communicating with a 3rd party about the alleged debt without the prior consent of the consumer in violation of 15 U.S.C. §§ 1692b and 1692c.
- d) by making any false representation or deceptive means to collect or attempt to collect a debt or obtain information concerning the consumer in violation of 15 U.S.C. § 1692e(10).

WHEREFORE, Plaintiff prays for a judgment against the Defendant for actual damages and for statutory attorney fees in a reasonable amount and a statutory award of up to \$1,000.00 and for further relief as the Court shall deem appropriate.

COUNT II
Telephone Consumer Protection Act (TCPA)

COMES NOW, the Plaintiff and for her Second Cause of Action, states and alleges as follows:

10. Plaintiff repeats and incorporates the foregoing allegations contained above as if more fully set therein.

11. At all times relevant hereto, Plaintiff was an individual residing within the state of Nebraska, and is a "person" as defined by 47 U.S.C. § 153(10).

12. That Defendant is a Pennsylvania corporation and is a "person" as defined by 47 U.S.C. § 153(10).

13. Defendant conducts business in the state of Nebraska.

14. Plaintiff does not, and at all times mentioned herein did not, have a prior existing business relationship with Defendant.

15. From and after April 2011, Defendant contacted Plaintiff via telephone, on dates through an "unsolicited advertisement" by way of a "telephone solicitation," as these terms are defined by 47 U.S.C. § 227(a)(3), to her residential telephone line using an artificial or pre-recorded voice to deliver a prerecorded message using an automatic telephone dialing system.

16. These telephone calls were made by Defendant to Plaintiff's cell phone without Plaintiff's prior expressed consent in violation of 47 U.S.C. § 227(b)(i)(B).

17. Upon information and belief, Defendant contacted Plaintiff via an "automatic telephone dialing system," as defined by 47 U.S.C. § 227(a)(i).

18. These calls were made without Plaintiff's prior expressed consent in violation of 47 U.S.C. § 227(b)(i)(B).

19. The foregoing acts and omissions of Defendant constitute numerous and multiple intentional and negligent violations of the TCPA, including but not limited to, the above provisions of 47 U.S.C. § 227 *et seq.*

20. As a result of Defendant's negligent violations of the TCPA, Plaintiff is entitled to an award of \$500.00 in statutory damages for each violation.

21. That the foregoing acts and omissions of the Defendant constitute numerous and multiple knowing and/or willful violations of the TCPA, including those cited above.

22. That Plaintiff is entitled to receive damages, as provided by statute, up to \$1,500.00 for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

WHEREFORE, Plaintiff respectfully requests that the court grant Plaintiff the following relief:

- a) \$500.00 in statutory damages for each violation for Defendant's negligent acts.
- b) \$1,500.00 in statutory damages for each knowing and/or willful violation.
- c) Attorney fees and costs.

Dated: January 24, 2012

JULIE WAGNER, Plaintiff,

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JURY DEMAND

Plaintiff demands a trial by jury as to all issues so triable.

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